

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN CINDY YOUNKIN**, on February 16, 2001
at 2:15 P.M., in Room 152 Capitol.

ROLL CALL

Members Present:

Rep. Cindy Younkin, Chairman (R)
Rep. Rick Dale, Vice Chairman (R)
Rep. Gail Gutsche, Vice Chairman (D)
Rep. Keith Bales (R)
Rep. Rod Bitney (R)
Rep. Dee Brown (R)
Rep. Gilda Clancy (R)
Rep. Aubyn A. Curtiss (R)
Rep. Larry Cyr (D)
Rep. Bill Eggers (D)
Rep. Ron Erickson (D)
Rep. Christopher Harris (D)
Rep. Linda Holden (R)
Rep. Joan Hurdle (D)
Rep. Rick Laible (R)
Rep. Jeff Laszloffy (R)
Rep. Douglas Mood (R)
Rep. Bob Story (R)
Rep. Brett Tramelli (D)
Rep. David Wanzenried (D)

Members Excused: None.

Members Absent: None.

Staff Present: Holly Jordan, Committee Secretary
Larry Mitchell, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 455, 2/16/2001; HB 513,
2/16/2001; HB 446, 2/16/2001;
HB 535, 2/16/2001

Executive Action: HB 457; HB 532; HB 455; HB
473; HB 513; HB 535

EXECUTIVE ACTION ON HB 457

{Tape : 1; Side : A; Approx. Time Counter : 0.1}

Motion: REP. BROWN moved that HB 457 DO PASS.

Discussion:

REP. ERICKSON thanked former Representative Simon and other proponents for the bill for letting him know some solutions for his own situation where he would like to continue having inspections. He will still vote against the bill because in Missoula there is a vast area which ought to have building inspections.

REP. CURTISS stated that she strongly supports the bill.

REP. STORY stated that he voted for and against the bill several times. It's easy to be on either side of this. He stated that he is in support of the bill.

REP. HURDLE stated that if this bill passes these people it affects should forever give up their right to use any fire protection or city services.

REP. LASZLOFFY stated that the most important things are life safety issues. Plumbing and electricity are already covered and the rest of it is just an excuse for local governments to line budgets with money that is extracted through permits. It is important to remember that every house built today has to be built to code or it can't be financed. The scare tactic that unsafe structures are being built all over the state is ridiculous.

Vote: Motion carried 15-5 with Eggers, Erickson, Gutsche, Hurdle, and Tramelli voting no.

EXECUTIVE ACTION ON HB 532

{Tape : 3; Side : A; Approx. Time Counter : 6.2}

Motion: REP. WANZENRIED moved that HB 532 DO PASS.

Motion: REP. WANZENRIED moved that the AMENDMENTS FOR HB 532 BE ADOPTED.

Discussion:

REP. BROWN stated that she has heard from people who were very upset about others looking at their annual incomes.

REP. WANZENRIED stated that information is readily available with the census. He received only one letter in support of the bill.

REP. WANZENRIED passed out the amendments **EXHIBIT (nah39a01)** and explained them.

Vote: Motion **carried unanimously.**

Motion: **REP. WANZENRIED** moved that **HB 532 DO PASS AS AMENDED.**

Discussion:

REP. WANZENRIED stated this is simply clarifying and adding a slight bit more detail to a law that was enacted in 1999. It provides what a growth policy must contain. It strengthens a law that is already pretty good.

REP. BROWN stated that her concern is that her home is susceptible to wildfire and lives there by choice. She stated that she did not want lines 3 and 4, page 8, left in the bill.

REP. LASZLOFFY stated that it is not the legislature's job to try to tell people where to live on private land. He stated that he understands the argument with respect to fires and allocating resources but that could be taken care of through policy. People who move into these areas know that they are taking risks. We should let the private market take care of that.

Motion: **REP. LASZLOFFY** moved that **HB 532 BE AMENDED BY STRIKING LINES 3, 4, 19 AND 20 ON PAGE 2.**

Discussion:

REP. WANZENRIED stated, that amendment is not friendly. Growth policies have to be viewed as more than just a matter of a single household that may have an interest of locating in a high risk area. We all pay a price for that. Growth policies are designed to inform the landowner and everybody that there are some things out there that they need to be sensitive about. It may not be the total prerogative of local governments to deal with that but all of us benefit from the bill. He opposes the amendments.

REP. STORY stated that he will support the amendments because in the end he will oppose the whole bill. That has to do with the

fact that the act is just a basic minimum outline of what the counties need to include in a policy. It is not a restriction to the maximum of what they can put into a policy. The fewer restrictions on growth policies the better.

REP. BITNEY concurred with deleting lines 3 and 4 on page 2. In the planning board process those things are already inclusive so it is redundant and it further erodes property rights.

REP. ERICKSON stated that this doesn't attack private property rights at all, it tells if there are hazard areas in your community. He stated that he was a bit worried about the word elimination because you can't eliminate these problems. You should plan for some strategy of reduction. To say that you are not supposed to think about these natural disasters when you plan does not make any sense.

Vote: Motion failed 10-10 with Bales, Bitney, Brown, Clancy, Curtiss, Holden, Laible, Laszloffy, Mood, and Story voting aye.

REP. BALES stated that he is confused regarding what **REP. WANZENRIED's** amendment number 1.

REP. YOUNKIN explained that amendment.

REP. BALES stated that by doing that you are simply saying that the only housing need you are going to be looking at is for affordable housing. A county plan should look at all housing needs of all people. The purpose of a county plan is to look at all things and to make a decision about all aspects of housing. He suggest that the committee table the bill.

REP. YOUNKIN stated it says housing needs, including the need for affordable housing, it is not limited to affordable housing needs.

Larry Mitchell stated that he does agree with **REP. YOUNKIN's** interpretation.

REP. CURTISS stated that she will not support the bill because it's passing on an unfunded mandate to counties.

REP. LASZLOFFY stated that he disagrees with **REP. ERICKSON**. Page 2, lines 19 and 20, call for a strategy to be put in place to reduce inappropriate and unsafe development in natural hazard areas.

Motion: **REP. LASZLOFFY** moved **HB 532 BE AMENDED BY STRIKING LINES 19 AND 20 ON PAGE 2.**

Discussion:

REP. HURDLE stated planning is a strategy. People are supposed to get together, cooperatively, and make a plan. **REP. CURTISS** referred to a part of the bill that is already law. She supports the bill.

Vote: Motion failed 10-10 with Bales, Bitney, Clancy, Curtiss, Dale, Holden, Laible, Laszloffy, Mood, and Story voting aye.

REP. DALE stated he opposes the bill because it is the option of the planning entity to address these things. If you miss identifying something there may be a liability to the county or city if something happens.

REP. LAIBLE stated he opposes the bill because it is primarily addressing low cost housing not overall planning which was the intent of the original bill. Also, the market place for low cost housing will determine where it will be. It is almost impossible to determine ahead of time where there will be low cost housing. The plan can mandate that there will be some low cost housing but you can't say where it is going to be. He stated that he is also concerned with the funding counties have to complete their growth plan. This hinders the whole process of a growth plan.

REP. HURDLE stated that she has been to a mixed income development in Portland, Oregon, which was really beautiful. These kinds of things come about because, in their planning process they address the needs of all of the people of the community. She explained the development in Portland.

REP. ERICKSON stated that this bill will not affect Missoula and gave an example there. He stated that this does work.

REP. BALES stated that he finds it ironic that Missoula has this plan done and yet Judy Smith was one of the main proponents of this. She said that Missoula was one of the places that really needed this the worst.

REP. ERICKSON stated that Judy Smith works all over the state of Montana.

REP. BALES stated that her example was Missoula. She stated that Missoula was short on low income housing and needed this planning and yet **REP. ERICKSON** is stating that Missoula already has this plan done. The planning doesn't seem to solve the problem.

Vote: Motion failed 9-11 with Cyr, Eggers, Erickson, Gutsche, Harris, Hurdle, Tramelli, Wanzenried, and Younkin voting aye.

REP. YOUNKIN reversed the motion and the bill is tabled 11-9.

HEARING ON HB 455

Sponsor: REP. DAVE LEWIS, HD 55, Helena

Proponents: Mike Murphy, MWRA

Janet Ellis, Montana Audubon
John Bloomquist, Montana Stock Growers Association
Laura Ziemer, Trout Unlimited
John Youngberg, Montana Farm Bureau
Stan Bradshaw, Trout Unlimited
Jeff Barber, American Fisheries Society, Montana
Chapter
Toby Day, Montana Wildlife Federation

Opponents: None.

Opening Statement by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 36.5}

REP. DAVE LEWIS, HD 55, Helena, stated HB 455 addresses a very sensitive issue, the issue of the leasing of water rights. The reason for presenting the bill is there may be an opportunity for some landowners and others who have water rights to use the rights, with long-term leases, to maintain in stream flow. It will also help develop irrigation projects, water storage projects, etc. He stated that has worked with a variety of groups to reach universal agreement. He passed out an amendment to the bill **EXHIBIT** (nah39a02).

Proponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 38.9}

Laura Ziemer, Trout Unlimited, stated that the western water project is dedicated to finding creative ways to keep water in streams to support healthy rivers and streams. Entering into voluntary agreements with individual landowners to lease the water right is one of the ways that the project tries to address low flow problems. This is a good idea as it already has a good track record in Montana. HB 455 provides a good and creative approach to solving water scarcity problems. It has a 12 year history with respect to the Department of Fish, Wildlife and Parks. Its authority to lease water was passed in 1989 and reauthorized in 1999. Fish, Wildlife and Parks has 14 water

leases in place. That allows Fish, Wildlife and Parks to do longer leases than the current 10 year limitation for non-conservation projects. It can do that for 30 years now which is what HB 455 seeks. Trout Unlimited has been doing leases since 1995 when the authority to allow private entities to do water leasing in addition to the Department of Fish, Wildlife and Parks was passed. Trout Unlimited has one lease completed and has several more in the works. HB 455 makes investing in irrigation inefficiencies more attractive by allowing water conservation projects to capture the water savings and lease those for in stream flow benefits for 30 years. With a 30 year lease expensive projects have a better chance of succeeding through private fund-raising efforts in a competitive grant process. HB 455 doesn't just benefit a group like Trout Unlimited, it benefits any entity that is interested in supporting the agriculture community while addressing water scarcity problems. The bill also allows to increase base flows and allows more water in stream. Therefore, when you get to a drought year and community based, voluntary efforts start to kick in, their job is easier because there is already more water left in stream and they don't have to work as hard to curtail their own water use. She asked for a do pass.

John Bloomquist, Montana Stock Growers Association, gave a background of HB 455. He asked for a do pass.

John Youngberg, Montana Farm Bureau, gave a background of HB 455. He stated that this bill was created with input from several groups. This bill protects the water rights of agriculturists yet gives the opportunity to allow for some long-term investment in some bigger conservation projects. He urged support of HB 455.

Mike Murphy, MWRA, stated that this is a win, win piece of legislation. He urged a do pass.

Stan Bradshaw, Trout Unlimited, stated, this is a good housekeeping bill. He urged a do pass.

Opponents' Testimony: None.

Informational Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 48}

Jack Stults, DNRC, stated, the leasing bill has been in place since 1995. He also stated that he is available for any questions the committee may have.

Questions from Committee Members and Responses:

{Tape : 1; Side : A; Approx. Time Counter : 48.8}

REP. YOUNKIN asked **Mr. Stults** why there is a termination date of June 30, 2005. **Mr. Stults** stated, the leasing statute, since it's beginning, has been seen as a new direction to go with water law in Montana and therefore it has always had a sunset date on it. That sunset date has been extended a few times.

REP. ERICKSON asked **Mr. Stults** what the impediments may be and why can't we make this work better. **Mr. Stults** stated that Montana has a young water use act, adopted in 1973. The impediments have been getting the word out but more importantly there have been funding impediments. There is some hesitancy on the part of lending agencies or other people who would be putting money towards these.

REP. LASZLOFFY asked **Mr. Stults** who is the leasee. **Mr. Stults** stated that it can be just about anybody. **REP. LASZLOFFY** followed up asking, if Trout Unlimited was the leasee and the purpose of the lease would be to keep water in the stream so that we have the stream flow necessary to sustain trout population, is that why they would do that? **Mr. Stults** stated, under this particular leasing program that is the primary purpose of this.

REP. LASZLOFFY asked if they can leave the water in the stream for as far as they want and then pull it out sometime later when the water could be resold. **Mr. Stults** stated there is a determination that needs to be made as to what reach of stream that water is actually protectable within. What you are talking about is taking the water right and applying it into an instream use which means that it has a protectable interest in that in stream flow. You have to be able to know that water is occurring within a certain reach of stream. There is an identified reach of stream that the lease applies to. **REP. LASZLOFFY** asked, once the water has passed through the protected reach of stream can that water be taken out of the stream and resold? **Mr. Stults** stated yes. If the reach of stream is just a certain stretch that needs to be protected because that's where the benefit will accrue to the fishes resource. After that area there is no interest in protecting that water so it could be available to other appropriators within that reach.

REP. STORY asked **Mr. Bloomquist** regarding the language on page 2, line 14 of the bill, that seems like strange language. Are the words "the water affected" even in statute? **Mr. Bloomquist** stated conceivably you could be talking about a portion of a water right. He stated, the language doesn't bother him too much. **REP. STORY** stated, in the stream there is a whole bunch of

water and the right you are dealing with is a portion of that water. The whole body of water in the stream is the water affected. **Mr. Bloomquist** stated, depending on flow circumstances, that could be all of the water. In other circumstances it may be just a portion of the water.

REP. LAIBLE asked **Mr. Stults** if a rancher or water user has surplus water then he can lease, on a long-term basis, that water right, correct? **Mr. Stults** stated yes.

Closing by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 58.4}

REP. LEWIS stated that this bill just seems like such a good idea. It is totally voluntary on the part of the landowner. He asked for a do pass.

EXECUTIVE ACTION ON HB 455

{Tape : 1; Side : A; Approx. Time Counter : 59.9}

Motion: **REP. CLANCY** moved that **HB 455 DO PASS.**

Motion/Vote: **REP. CLANCY** moved that the **AMENDMENT FOR HB 455 BE ADOPTED.** Motion carried unanimously.

Motion: **REP. CLANCY** moved that **HB 455 DO PASS AS AMENDED.**

Discussion:

REP. STORY stated that he still has some confusion with the language "the water affected". He gave an example of a problem which may occur with this language.

REP. LASZLOFFY asked **REP. STORY** what if you lease out x number of acre feed and then you get into a drought situation where you don't have enough water to raise a crop. Is that water dedicated with no way to get enough to your crop? **REP. STORY** stated that all depends on the terms of your lease and whether you subordinated your water to the lease. ***{Tape : 1; Side : B; Approx. Time Counter : 0.1}***

REP. HOLDEN asked **Mr. Bloomquist**, regarding line 14, should it say "if the water right to be affected?" **Mr. Bloomquist** stated, to clear up this matter it should read, "if the appropriation right to be affected by a temporary change is made available from the development of a water conservation or storage project..."

REP. YOUNKIN asked Mr. Bloomquist if "appropriation water right" is defined in the code as being pre 1973 right. Mr. Bloomquist stated, non-existing rights is defined in the code as pre 1973. Appropriation right would a permitted water.

Motion/Vote: REP. HOLDEN moved that HB 455 BE AMENDED TO READ AS MR. BLOOMQUIST STATED. Motion carried unanimously.

Motion/Vote: REP. CLANCY moved that HB 455 DO PASS AS AMENDED, AMENDED. Motion carried unanimously.

HEARING ON HB 513

Sponsor: REP. DAN FUCHS, HD 15, Billings

Proponents: Clayton Fiscus, Broker, Fiscus Realty
REP. DEE BROWN, HD 83, Hungry Horse

Opponents: Matt Clifford, Clark Fork Coalition
Tim Davis, Montana Smart Growth Coalition
Anne Hedges, MEIC
Janet Ellis, Montana Audubon

Opening Statement by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 4}

REP. DAN FUCHS, HD 15, Billings, stated that HB 513 is a simple bill. He explained the bill. He submitted a letter from Jeff Larson **EXHIBIT**(nah39a03).

Proponents' Testimony:

{Tape : 1; Side : B; Approx. Time Counter : 6.8}

Clayton Fiscus, Broker, Fiscus Realty, submitted written testimony **EXHIBIT**(nah39a04)

REP. DEE BROWN, HD 83, Hungry Horse, stated that she is in strong support of HB 513. She stated at her campground she has to test for nitrates yearly. In the state of Montana you are allowed to have 10 parts per million in your water. Not only are single dwelling homes at a very low risk for nitrates but development is also. Every year she is tested she has less than 300ths of 1% nitrates. She stands in favor of eliminating one more rule in Montana.

Opponents' Testimony:

{Tape : 1; Side : B; Approx. Time Counter : 15.7}

Matt Clifford, Clark Fork Coalition, stated that nitrates are a problem in some parts of the state. He talked about the situation in the Clark Fork. He submitted written testimony from Peter Nielsen **EXHIBIT**(nah39a05).

Tim Davis, Montana Smart Growth Coalition stated, nitrate testing is a public health issue. The cumulative impact in single family homes on the groundwater they use for their wells is significant. Nitrate poisoning from septic systems directly affects and threatens human health. Infants are at the highest risk for nitrate poisoning. Nitrate prevents blood from carrying oxygen to vital parts of the body. It can cause blue baby syndrome and death. Nitrate levels are also indicators of other forms of contamination by septic pollution. He gave an example of this. He urged a do not pass.

Questions from Committee Members and Responses:

{Tape : 1; Side : B; Approx. Time Counter : 21.6}

REP. BROWN asked **Mr. Clifford** if Stone Container in Missoula and other large sources have to do nitrate testing. **Mr. Clifford** stated yes. As point sources those all have to get point source permits. **REP. BROWN** asked how many parts per million are coming out of places like stone container. **Mr. Clifford** stated that extensive amount of testing is done and his guess would be well over half. **REP. BROWN** asked if every month they do their testing they are over 10 parts per million. **Mr. Clifford** stated that 10 parts per million is a groundwater standard, not a surface water standard. He stated that he is quite certain that the discharge is above 10 at times. **REP. BROWN** asked if commercial activities are being monitored by DEQ. **Mr. Clifford** stated those point source discharges are monitoring their activities.

REP. LASZLOFFY asked **Mr. Clifford** what percentage of the total volume of nitrates in the Clark Fork do you feel comes from single family homes. **Mr. Clifford** stated, compared to the point source discharge it is not a huge amount yet it is an increasing amount. It's a relatively small but increasing part of the load.

REP. STORY asked **Mr. Clifford**, regarding page 7 of the bill, does the law say the discharge will not cause degradation of the water outside the mixing zone, then if it's not sewage it can't be over 7.5 milligrams per liter? **Mr. Clifford** stated he doesn't believe that addressed it.

REP. DALE asked **Mr. Davis** asked if the city of Missoula is in compliance with their discharge permit. **Mr. Davis** stated he believes they are now. He deferred the question to **Mr. Clifford** who stated that they are well within their permit. **REP. DALE** asked if he anticipates doing anything about the orders of magnitude higher level nitrates that enter the groundwater from fertilizers, alfalfa, etc. **Mr. Clifford** stated yes, that is a major part of the strategy of the Tri-state Water Quality Council. **REP. DALE** asked if the septic tanks and drain field systems put in within the last 10 years were put in according to code within the 4.5 mile donut. **Mr. Clifford** stated that he did not know. **REP. DALE** stated that it is his understanding that if they are put in according to code the liquid evaporates and the water does not migrate. There are larger contributors, by order of magnitude, such as non-point sources so how did these small amounts of water become the focus of your efforts? **Mr. Clifford** stated, the non-point contributions from runoff, etc., is a larger number but it's order of magnitude is not larger. Nitrates are a watershed wide problem. The river is at or just above the level where there are very harmful effects. **REP. DALE** asked **Mr. Clifford** how he would propose that the rest of the state be addressed that don't have this problem. **Mr. Clifford** stated that nitrates are very different from watershed to watershed. The Board of Environmental Review has regulations that are capable of handling that. The individual basins should be looked at. This broad-based approach does not work. The question is when the nitrates are going to get to the river, not if. **REP. DALE** asked if all groundwater experts say that. **Mr. Clifford** stated that he is talking about Dr. William Woosner at the University of Montana.

REP. STORY asked **REP. FUCHS**, regarding section 3 of the bill, lines 25 and 26, what is the purpose of the new language? **REP. FUCHS** stated that language makes the determination if there is an increased level a petition will be offered where an investigation can take place if there is a problem with the nitrates. **REP. STORY** asked who would bring the petition to the board to consider. **REP. FUCHS** stated it would be the County Sanitarian.

REP. ERICKSON asked **Mr. Clifford** aren't there two very different problems that we are looking at here? One is those areas where there is the possibility for nitrates flowing into streams. The other has to do with the health particularly in infants. **Mr. Clifford** stated that is correct. **REP. ERICKSON** stated that just because there are not problems in eastern Montana that does not mean that we should eliminate a standard that has to do with the health of infants, correct? **Mr. Clifford** stated that is correct.

REP. HARRIS asked **REP. FUCHS** what scientific evidence does he have to say that when there are septic systems on 1 acre lots or larger that is, by definition, non-significant. **REP. FUCHS** stated, it was the legislative services that suggested 1 acre lots. As far as significance, if the code is followed and the septic is installed properly then the majority of it evaporates. **REP. HARRIS** stated that this is a determination by definition. He would feel more comfortable with scientific evidence to back this up. **REP. FUCHS** stated that he would like to provide that evidence to the committee.

Closing by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 40.4}

REP. FUCHS stated that this is a simple bill. It is non-significant in the big picture. He gave examples in his district. In order for development to proceed this restriction must be removed. It is an unnecessary added cost to the developer. He urged a do pass.

HEARING ON HB 446

Sponsor: **REP. DOUG MOOD, HD 58, Seeley Lake**

Proponents: Patrick Heffernan, Montana Logging Association
Cary Hegreberg, Wood Products Association
John Youngberg, Montana Farm Bureau
Angela Janecaro, Montana Mining Association
Mike Collins, Helena, self

Opponents: Rick Weaver, Montana Newspaper Association and Big Sky Publishing
Brad Hurd, Montana Newspaper Association and Lee Enterprises
Jim Fall, Montana Newspaper Association

Opening Statement by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 43.3}

REP. DOUG MOOD, HD 58, Seeley Lake, defined the words "newspaper" and "newsprint". Newspaper has ink on it and newsprint is the paper that the newspaper is printed on. He handed out a letter from Mike Collins **EXHIBIT (nah39a06)** and a sheet on newsprint calculations **EXHIBIT (nah39a07)**. He went over the newsprint calculations. He stated, if 40% of newsprint that is used in Montana is recycled that would still require the newspaper

industry to use 1,850 truckloads of logs in order to publish the newspapers. The fact is that the newspapers are the single largest user of wood products in the state of Montana. He suggested that newspapers are a resource industry and in-fact an extractive industry. He read from MEPA, section 75-1-103. He stated that if wood fiber is a depletable resource or an extractive industry then the newspapers are a part of that industry. If it is a policy, as it states in MEPA, that we are going to maximize recycling it seems to make sense to bring to the body the "Montana Newsprint Recycling Act." The act will set certain standards for the newspapers in the state to meet in next five years. Recycling does not necessarily mean that they have to put it into newsprint, recycling can be a number of things. He gave birdcages and insulation as an example. When you read a newspaper you are not after the newsprint, you are after the information on the newsprint. He stated that HB 446 is not retribution, animosity and he is not attempting to take someone to the woodshed.

Proponents' Testimony:

{Tape : 1; Side : B; Approx. Time Counter : 49.9}

Patrick Heffernan, Montana Logging Association, quoted from **EXHIBIT (nah39a08)**. He stated that the members of his association feel pretty brow beaten at times. He wanted the committee to know how the members feel about the constant negative press they seem to get. The editorial is titled "Giving the timber issue new thought" and today we are giving the newspaper issue new thought. He stated, "before you today is HB 446 and here's what we hope: That those people who make their living printing newspaper stories and selling advertising, printed on the paper products that our members are involved in producing, we hope they see the economic potential in learning how to recycle them." He went over some specific points of the bill and some parts he would like to see amended. He asked for a do pass.

Cary Hegreberg, Wood Products Association, stated that he supports HB 446 with amendments. He handed out a packet of editorials and guest columns **EXHIBIT (nah39a09)**. He stated that he supports the directives in the bill but finds some of the language to be highly offensive. He stated that he supports the amendments offered by **Mr. Heffernan**. He also proposed some of his own amendments. He gave a history of how HB 446 came about. He stated, "Recycling is certainly popular, if a newspaper is delivered to my door why can't they come pick it up?" He stated this is a jobs bill because it will create those jobs of picking up the newspaper. HB 446 gives these companies the opportunity to do the right thing. He stated, if these newspapers get their

way and the wood product industry retools itself, where are they going to get the 3,082 logs they need to publish their newspaper.
{Tape : 2; Side : A; Approx. Time Counter : 0.1}

John Youngberg, Montana Farm Bureau, stated that agriculturalists support recycling whenever feasible. He read from the Montana Farm Bureau Policies.

Angela Janecaro, Montana Mining Association, stated that MMA supports HB 446. This is just another example of how valuable it is to recycle our natural resources. She asked for a do pass.

Opponents' Testimony:

{Tape : 2; Side : A; Approx. Time Counter : 2.8}

Rick Weaver, Montana Newspaper Association and Big Sky Publishing, stated, that Big Sky Publishing is the second largest recycler in all of Southwest Montana. Number one is all of the city's cardboard. This includes all state agencies. He passed around a piece of newsprint **EXHIBIT (nah39a10)**. He stated that 10% of that sheet is made from recycled newspapers, the other 90% is made from residual waste from sawmills. Therefore, every bit of the newsprint is being recycled. There are two things that make up newsprint, recycled newsprint and virgin forests. He stated that he has particular problems with section 2, clauses A - C. He doesn't see how any newspaper can be held accountable for doing any of that if they are buying newsprint from a newsprint company that makes all of their paper from recycled newspapers or the recycled waste of sawmills. Section 1, number 3, where it states that a newsprint distribution system is currently in place, is simply not true. The distribution system does not exist. For the newspapers to ask the independent carriers to do something that is outside of the contract is a breach of a legal contract and/or could even be a violation of Montana Labor Law. Regarding section 1, number 4, **Mr. Weaver** stated that he has a hard time accepting responsibility for destroying forests and forest ecosystems. In using the waste of the timber industry, newspapers are getting rid of a disposable waste. Regarding section 5, there isn't any newsprint available in the state of Montana that has the content of recycled newspapers that is listed. The content of the newsprint depends on what region of the country you are in. Regarding section 7, the civil penalties are too harsh. He stated that it is up to the readers to recycle the newspaper. He urged a do not pass.

Brad Hurd, Montana Newspaper Association and Lee Enterprises, stated that his opinion pages are open to everyone. He stated that Lee Enterprises has been very proactive for the last 15

years in working with different manufacturers on improving the recycled portion of the newsprint. The *Independent Record* is about 40% recycled. He went over the ways the *IR* is attempting to get their subscribers to recycle their newspapers. He stated, as an industry, those products that come into the presses have been managed as well as they can be. They could probably take additional roles in recycling and would welcome any suggestions. He stated, HB 446 is not the answer to this problem.

Jim Fall, Montana Newspaper Association, submitted written testimony **EXHIBIT (nah39a11)**.

Informational Testimony:

{Tape : 2; Side : A; Approx. Time Counter : 25.6}

Peg Likens, Keep Montana Clean and Beautiful, submitted written testimony **EXHIBIT (nah39a12)** and a copy of her newspaper **EXHIBIT (nah39a13)**.

Questions from Committee Members and Responses:

{Tape : 2; Side : A; Approx. Time Counter : 28.3}

REP. LASZLOFFY asked **Mr. Weaver** what his contractors do with the newspapers in the vending machine that go unsold. **Mr. Weaver** stated those are different contracts. About a dozen people have contracts that allow them to bring back unsold copies. **REP. LASZLOFFY** asked, what happens to those newspapers? **Mr. Weaver** stated, they are recycled.

REP. STORY asked **Mr. Fall** if he said 50% to 60% of the print in Montana is recycled. **Mr. Fall** said that is correct. It is an estimate. **REP. STORY** asked, what happens to the other 30% - 40% that is not recycled? **Mr. Fall** stated, it probably goes into the landfill. Nationally, less than 6% of the newsprint goes into landfills. **REP. STORY** asked **Mr. Fall** if he feels there is room for improvement in the amount of papers that are recycled. **Mr. Fall** stated that they do not recycle 100% so there is room for improvement.

REP. STORY asked **Mr. Weaver** if one of his concerns is that it may not be technologically or economically feasible to do what the bill requires. **Mr. Weaver** stated that he is concerned about the language of the bill in several areas. He asked **REP. STORY** if he was referring to the distribution system. **REP. STORY** stated that he is referring to the amount of recycled paper that would need to be used. He asked **Mr. Weaver** if he thinks it is economically

feasible to recycle that much and will the presses run paper that are mainly recycled. **Mr. Weaver** stated there are several newsprint companies, based on the east coast, that somehow are managing to produce newsprint that is 100% recyclable. That newsprint is not available in the state of Montana and they wouldn't sell it in the state of Montana. The reason would be because the shipping costs are too high to do business here. The reason why they have the recyclable newsprint is that they are close to the urban forests or the recyclable newspapers. There is not one state in the western United States that has any recyclable demands on newsprint like in this bill, it is not possible. **REP. STORY** asked if the people of Montana should decide that this policy is what they wish, would you do whatever it takes to comply with that policy? **Mr. Weaver** stated that it is not possible. The companies from the east coast would not sell to Montana. He stated, maybe the real intent of this bill is to stop newspapers.

REP. CLANCY asked **Mr. Fall** where does the 20 tons of newsprint come from? **Mr. Fall** stated that most of it comes from two mills north of Spokane. Some of it comes from Canada. **REP. CLANCY** asked, then it comes from out of state? **Mr. Fall** stated yes. **REP. CLANCY** asked, what is the ink on the newsprint made out of. **Mr. Fall** stated it was originally a petroleum bi-product. Most of the major newspapers now use a soy based oil. **REP. CLANCY** asked, is that what Lee Newspapers uses? **Mr. Fall** stated that he was sure it is.

REP. ERICKSON asked **REP. MOOD** who all will be included once you are to the 5,000 tons? **REP. MOOD** stated Gannett Publishing and Lee Enterprises. **REP. ERICKSON** asked **REP. MOOD**, regarding the letter from Verle L. Rademacher, included in Exhibit 11, how would he respond to it. **REP. MOOD** stated, this bill is not talking about people's history, it is not talking about the affection that they have for the business they are in, it is talking about Montana Policies. The Montana Environmental Policy Act says that the people of Montana should do everything they can to maximize recycling and that's what this bill is trying to do. **REP. ERICKSON** asked **REP. MOOD** if he thinks Verle L. Rademacher is wrong calling this a "spite bill". **REP. MOOD** stated, what is good for one extractive industry is good for another extractive industry. He stated that this is not directed at any particular newspaper or individual. There is a mindset in Montana that has singled out individual industries for some kind of retribution.

REP. HARRIS asked **Mr. Hegreberg** if it would be possible to amend the bill to restrict it to only newspapers who have negative editorials. **Mr. Hegreberg** stated that he assumes that **REP.**

HARRIS is being a bit factious. He stated that he realizes there is a freedom of the press in the U.S. and that sort of amendment would not pass. **REP. HARRIS** then asked, regarding the \$10,000 per day fine, is that the kind of penalty that is needed in order to achieve compliance of this bill? **Mr. Hegreberg** stated, that provision is subject to debate and amendment. There are a number of environmental statutes which hold a maximum of \$25,000 per day civil penalty. **REP. HARRIS** asked **Mr. Hegreberg** if he is in favor of continuing this policy across the board for all products that end up in the hands of the consumers. **Mr. Hegreberg** stated that he is not qualified to answer that question. **REP. HARRIS** asked if the newsprint industry was not purchasing the sawmill waste who would? **Mr. Hegreberg** stated that there are a number of manufacturers who use the bi-products. He gave some examples. If sawmills are forced to close they will no longer be producing residual bi-products. The competition for the bi-products is becoming quite fierce.

REP. BALES asked **Mr. Weaver**, are you getting newsprint from Alberta? **Mr. Weaver** stated yes, 75% - 80% of the newsprint comes from Alberta Newsprint Company. **REP. BALES** asked if that product is made in the U.S. **Mr. Weaver** stated yes, another newsprint supplier is Inland Empire Paper Company in Washington state. The newsprint passed out (Exhibit 10) is the best sheet available and probably the most expensive. **REP. BALES** asked if there has been newsprint manufacturing within the state of Montana. **Mr. Weaver** stated that he does not know. **REP. BALES** asked why not, we have timber here, would you be interested in buying from the state to foster jobs in Montana? **Mr. Weaver** stated, if there was a company in the state of Montana producing newsprint he would be talking to them.

REP. DALE asked **Mr. Fall** do you feel newspapers in the state generally are in favor of placing issues on the ballot? **Mr. Fall** stated that different publishers may have different opinions. He, as a publisher, feels that it depends on the issue. **REP. DALE** asked, regarding a Lee Newspapers poll that surveyed the public on this issue, the people favored putting issues like this on the ballot, do you have a recollection of that? **Mr. Fall** stated he does not.

REP. LAIBLE asked **Mr. Fall** how many tons of newsprint are used in the state of Montana? **Mr. Fall** stated, about 20,000 tons. **REP. LAIBLE** asked, of the 20,000 tons how much is actually recycled and used again in the newspapers? **Mr. Fall** stated, about 60% is recycled. Used newsprint in new newsprint varies from none to 10% - 40%. **REP. LAIBLE** asked, is it technologically possible that we can recycle this material so that we can reuse it in the

state rather than having to buy newsprint from out of state? **Mr. Fall** stated, it has to be purchased out of state because there is no newsprint manufacturing facility in Montana. The people involved in recycling have concerns about newspapers entering the recycling stream. **REP. LAIBLE** asked how difficult would it be to expand the process where the papers would be collected after they are read. **Mr. Fall** stated, less than 6% of newsprint goes into the landfill. It would not be easy to set up a collection system. The consumers can take it upon themselves to recycle the newspapers if they choose to do so.

Closing by Sponsor:

{Tape : 2; Side : A; Approx. Time Counter : 56.8}

REP. MOOD stated that this is a wonderful idea. Everyone seems to agree that recycling is a good idea. It is the policy of the state of Montana. If the newspapers can place boxes out to sell newspapers they can place boxes to pick them up. He spoke of how this bill came about. This bill could bring jobs to Montana. This bill is talking about the environment. Where are the environmentalists? All of the proponents were from industry. They say it is a wonderful idea to limit the cutting down of our forests. If their goal is to improve the environment where are they? A number of the opponents talked about the number of employees they have, what about the employees in the extractive industries that have been forced to leave the state? The arguments about employees, costs and technology don't hold up when we are talking about the environment. Who cares what it costs to save the environment? He asked for a do pass.

HEARING ON HB 535

Sponsor: **REP. CHRISTOPHER HARRIS, HD 30, Bozeman**

Proponents: **Richard Parks, Northern Plains Resource Council**
John Wilson, Trout Unlimited
Bonnie Gestring, MEIC
Janet Ellis, Montana Audubon
Darrell Holzer, AFL-CIO

Opponents: **Angela Janecaro, Montana Mining Association**
Jim Mockler, Montana Coal Council
Don Allen, WETA
Russ Ritter, ASARCO and MRI
Bill Kraemer, Luzenac America

Opening Statement by Sponsor:***{Tape : 2; Side : B; Approx. Time Counter : 0.5}***

REP. CHRISTOPHER HARRIS, HD 30, Bozeman, stated, HB 535 deals with the adequacy of reclamation bonds for mines. It focuses on one aspect of that, mainly how to make sure that the bond that the mining company has obtained is adequate for reclamation. The current law says that the reclamation bond must be adequate to take care of all of the reclamation costs which include clean up, monitoring, etc., as if the job were to be done by DEQ. Coming up with the accurate figure is what this bill is attempting to do. This bill is not in any way intended to be an anti-mining bill. The essence of the bill is, when a mining company looks at their bond they need to look at it carefully and really pay attention to what is adequate. The statutory definition of adequate is what it would cost the DEQ to do the reclamation work if it fell to them. There is no doubt that if the mining company were to do the reclamation work it would cost less. They are more efficient, they know their operation better and they would know how to do the reclamation work in a much cheaper, more efficient way. The trouble is, the purpose of the reclamation bond is to cover state costs if the mining company is no longer around. The other aspect of the bill is a recognition that DEQ doesn't know that mining operation nearly as well as the mining company. They can make their best guess estimates and they have their expertise in terms of calculating what the bond is but they don't know that operation. One of the purposes of having the certification is for the mining company to say, given all the information out there, this is the accurate amount. As a result of the certification there will be much more adequate estimates of what the reclamation will cost. This is not to say that the mining company can't disagree with DEQ. The proposed amendments will cover that **EXHIBIT(nah39a14)**. The amendments will narrow this to the metal mining industry. This a forward looking bill to get an accurate bonding amount. He passed out three articles **EXHIBIT(nah39a15)**, **EXHIBIT(nah39a16)** and **EXHIBIT(nah39a17)**.

Proponents' Testimony:***{Tape : 2; Side : B; Approx. Time Counter : 9.7}***

Richard Parks, Northern Plains Resource Council, stated, the bonding structure is there to protect the communities resources from damage from the mining operation and to meet the constitutional requirement that reclamation take place. He gave an example of the Mineral Hill Mine. This bill does address an important shortfall in the bonding structure. He asked for a do pass.

John Wilson, Trout Unlimited, stated, mine reclamation has been a fairly rough and long road in Montana. This bill is a very common sense approach for protection of Montana taxpayers and the environment. Good mine operators will have no problem with this certification. It is only potentially bad operators, who may not want to take responsibility for their actions, who may have difficulty with this certification. He urged the committee to protect Montana's environment and taxpayers by passing HB 535.

Bonnie Gestring, MEIC, stated, this bill would provide for greater accountability when it comes to bonding requirements under the Metal Mine Reclamation Act. Reclamation bonding requirements in Montana are inadequate. Reclamation bonds simply haven't kept pace with reclamation costs. The responsibility should be placed on the DEQ as the regulator but it should also be placed on the mining company. She read from 82-4-338. She spoke of the bankruptcy of Pegasus Gold. This bond certification would provide the DEQ some recourse against a company which purposely withholds information or misrepresents reclamation costs. Most companies in Montana operate in good faith but on the rare occasion that they don't this bill would provide the state with some recourse against the company. She urged a do pass.

Opponents' Testimony:

{Tape : 2; Side : B; Approx. Time Counter : 19.7}

Angela Janecaro, Montana Mining Association, stated, this is a spite bill. If the sponsor is so concerned with reclamation in the state why does this only apply to metal mines? Most mines in Montana are publicly traded, stock holders are considered the owners of the mine. If this is the case are they responsible for determining if the bond is adequate? The DEQ is the entity that sets and approves the reclamation plan and sets the bond amount. If that is the case should the director of the DEQ also sign an affidavit as to the adequacy of the bond amount? This bill makes a criminal out of an honest person. The proponents of this bill are very concerned about the taxpayer and the portion that he or she will have to pay for the unbonded liability of Montana for mine reclamation. To date not one cent of taxpayer money has been spent on reclamation however, approximately \$1,500 was spent on drafting this bill.

Jim Mockler, Montana Coal Council, stated, unamended the bill does include coal mines. Line 27 of the bill is asking the mine to certify, under oath, that the reclamation bond estimate is

correct. That puts the mine at a risk to be under penalty of perjury. He hoped for a do not pass.

Don Allen, WETA, stated, this bill is not necessary. Stillwater Mine and Golden Sunlight Mine have gone further than they were required to go in dealing with environmental issues. They are a very part of Montana's economy. Why make it tougher and require certain things of these people who are trying to do the right thing?

Russ Ritter, ASARCO and MRI, stated, MRI has been a good mine who is very interested in the needs of the community. The more things you do to keep mining out the less money will be put towards schools, etc. He stated, it is offensive to be threatened with perjury. The mines have to deal with too many obstacles as it is. Shouldn't there be some level of responsibility on DEQ to come up with an accurate bonding calculation? This is a bad piece of legislation, kill it.

Informational Testimony:

{Tape : 2; Side : B; Approx. Time Counter : 31.2}

Warren McCullough, DEQ, stated that he is available for any questions the committee may have.

Questions from Committee Members and Responses:

{Tape : 2; Side : B; Approx. Time Counter : 31.9}

REP. LAIBLE asked **Mr. McCullough**, how often does DEQ review a mine operation? **Mr. McCullough** stated, that depends on the nature of the operation. It is anywhere from four times a year to once a year. A full fledged bond review is required, by statute, at least every five years. An annual bond oversight is done. **REP. LAIBLE** asked, that being the case, aren't you already doing what this bill requires? **Mr. McCullough** stated, DEQ is conducting frequent bond reviews but that doesn't get to the question of corporate responsibility.

REP. ERICKSON asked **Mr. McCullough**, regarding Pegasus Gold, was there a change where one wasn't thinking there was going to be acid mine drainage then there suddenly was? **Mr. McCullough** stated that was before his time. He deferred the question to **Patrick Platenberg** of the DEQ who stated, the department noted changes in water quality at the Zortman - Landusky site in about 1993. As a result of that the department started to increase the bond. **REP. ERICKSON** asked why didn't the department get the

bonding up far enough. **Mr. Platenberg** stated, part of it was inexperience of the department staff. **REP. ERICKSON** asked, if that's the case couldn't it also be argued that Pegasus didn't know how much it was going to cost, is that right? **Mr. Platenberg** stated, that is potentially true.

REP. ERICKSON asked **REP. HARRIS** isn't it feasible that Pegasus also didn't know the costs of their reclamation. With your bill in place would they suddenly be held liable under penalty of perjury when they didn't know? **REP. HARRIS** stated, absolutely not. The amendment makes it clear that there is a good faith standard here. If that information is not known to the mine then there is no way that perjury could ever come into play. On the other hand, if the mine did have information and they were guarding it then the perjury could come into play. **REP. ERICKSON** asked **REP. HARRIS** why his bill is better than HB 69 other than the fact that it is on one page and the other is on 50. **REP. HARRIS** stated, this was drafted before he saw HB 69 and he wanted to put it in the file of ideas.

REP. STORY asked **REP. HARRIS** procedurally how would a charge of perjury be brought? **REP. HARRIS** gave an example. The Attorney General would launch the investigation to determine if perjury was committed and by whom. The charges would be brought by either the County Attorney or the Justice Department. If there is no knowledge then there is no perjury; there has to be knowledge. **REP. STORY** stated, there are a lot of people charged with crimes but their knowledge is a subject to be determined and tried. **REP. HARRIS** stated, perjury is not a negligent offense. You cannot negligently violate the perjury statutes either under federal or state law. **REP. STORY** asked, so once you are charged you are guilty? **REP. HARRIS** stated, under our system of jurisprudence, just being charged doesn't make you guilty. There are all kinds of defenses that would be available.

REP. DALE asked **Mr. McCullough** how many times would these plans be certified in the process by professional engineers, geologists, hydrologists, etc.? How many certifications would already be on those? **Mr. McCullough** stated, numerous times. **REP. DALE** asked, what would it take to have this kind of expertise available in the department? **Mr. McCullough** stated, there are a number of employees with varying degrees of expertise. It would take many employees to deal with everything at all times. **REP. DALE** asked how many employees would a mining company have to have to be aware of everything on every site. **Mr. McCullough** stated he did not know.

REP. BALES asked **REP. HARRIS** how many places in statute are corporate officers or directors asked to sign something and then be liable for perjury if it is not right? **REP. HARRIS** stated, to the best of his knowledge there are no statutes in Montana law. There is something in the Federal Clean Air Act that relates to this. **REP. BALES** asked, would you personally, sitting on a board, sign something like this? **REP. HARRIS** stated yes.

REP. LAIBLE asked **REP. HARRIS** asked, is the reason that the coal mines have been eliminated because they have no environmental exposure and they are not required to bond? **REP. HARRIS** stated no. The reason the amendment would take them out is because DEQ feels their problems with reclamation and bonding are minor compared to the metal mining industry.

REP. GUTSCHE asked **Mr. McCullough** who will pay the \$24.6 million in unbonded reclamation costs? **Mr. McCullough** stated, DEQ has been working with federal partners, the Forest Service and the Bureau of Land Management, to come up with funding from them to address the shortfalls. The money will come from wherever DEQ can get it. **REP. GUTSCHE** asked, who will pay those costs? **Mr. McCullough** stated, ultimately the cost will be paid by the taxpayer, either nationally or in Montana. **REP. GUTSCHE** asked, when a mine is bonded what information does DEQ get? **Mr. McCullough** stated, the bonds will be based on the operating permit application, the operating plan. **REP. GUTSCHE** asked, would this bill help the DEQ get the information they need to assess adequate bonding? **Mr. McCullough** stated, it would be a tool.

Closing by Sponsor:

{Tape : 2; Side : B; Approx. Time Counter : 55.5}

REP. HARRIS stated, it is complete nonsense to say that stockholders would be liable. The owner of the mine is defined in statute. The purpose of this bill is to focus in on the adequacy of the bond and the information that needs to be addressed. If DEQ has perfect information this bill would not be necessary. The truth is that the mine owners know their site, know their operations, know their facility, know their risks better than anyone else. They're the ones who have the best information. This bill just asks that the best information be reviewed at a high level to determine an adequate bond amount. Perjury will be rarely if ever used. He asked for a do pass.

EXECUTIVE ACTION ON HB 473

{Tape : 2; Side : B; Approx. Time Counter : 58.6}

Motion: REP. BROWN moved that HB 473 DO PASS.

Motion: REP. YOUNKIN moved that the AMENDMENT HB047301.alm BE ADOPTED.

Discussion:

REP. YOUNKIN passed out the amendment EXHIBIT(nah39a18) and explained it.

Vote: Motion on the amendment HB047301.alm carried unanimously.

Motion: REP. YOUNKIN moved that HB 473 DO PASS AS AMENDED.

Discussion:

REP. YOUNKIN stated that she has been called several unspeakable names over this bill. She made it clear to the committee that she loves Montana as much as anybody else does and she does not have any intention of degrading the environment. She went over her intentions with the bill. The bill simply says that MEPA is our information gathering device and it is a procedure by which that information will be gathered before the state proceeds with permitting something. *{Tape : 3; Side : A; Approx. Time Counter : 0.1}* It is the job of the legislature, not the agencies, to make laws and policies.

Motion: REP. GUTSCHE moved that the AMENDMENT HB047301.ate BE ADOPTED.

Discussion:

REP. GUTSCHE passed out the amendment EXHIBIT(nah39a19) and explained it.

REP. YOUNKIN asked Mr. Mitchell, now that the bill has been amended, how does that relate to the remark in the fiscal note on SB 377. Mr. Mitchell stated the remark in the fiscal note implies that it may interfere with the State Land Board Commissioner's authority to manage School Trust Lands. The drafter of this amendment was Michael Kakuk, he may answer the question better. REP. YOUNKIN deferred the question to Mr. Kakuk and asked him, "Now that HB 473 has been amended to include the words, as described in The Enabling Act, etc., is there any validity to the concerns of the remark #13 on the fiscal note for SB 377?" Mr. Kakuk stated, when he questioned the DNRC about #13

Monte Mason answered, by allowing these beneficiaries to make decisions on State Trust Lands there might be a constitutional problem. **Mr. Kakuk** stated, there is nothing in this bill that allows them to make those decisions. They can become more involved in the MEPA process, nothing in this bill takes any management powers away.

REP. YOUNKIN stated that she does not see **REP. GUTSCHE's** amendment as friendly. She would like to leave the language regarding State Trust Land in the bill. Sometimes the State Trust Lands are a project sponsor. It should be left clear that those State Trust Lands should have the same standing as a project sponsor.

REP. STORY stated that he would oppose the amendment. On page 3 of the bill in 4(b) it allows the project sponsor to ask the Board to conduct a review of a decision that was made by the department. This language would give the beneficiary some standing to go into the Board and take part in that proceeding.

REP. GUTSCHE stated, it does not matter who drafted this, it should be removed because we don't want State Trust Lands to even be considered as a project sponsor because they are governed under the Board of Land Commissioners.

REP. MOOD stated, the notion that the beneficiaries of the Trust should not have any input into how the Trust is managed is bogus.

Vote: Motion on the amendment HB047301.ate **failed 8-12 with Cyr, Eggers, Erickson, Gutsche, Harris, Hurdle, Tramelli, and Wanzenried voting aye.**

REP. ERICKSON handed out two documents from Montana Audubon Society **EXHIBIT(nah39a20)** and **EXHIBIT(nah39a21)** and went over those documents. He asked **REP. YOUNKIN** to respond to the examples of needed acts and the gaps in current environmental laws.

REP. YOUNKIN stated, during the EQC study prospective gaps were not looked at. Proven gaps were looked at. The lists passed out are possible gaps not actual gaps. She referred the table on page 95 in the green MEPA book regarding agency responses.

REP. ERICKSON stated MEPA is now and always has been both substantive and procedural. He stated, we are on a wrong path with this.

REP. HARRIS stated, an analogy would be Montana's Nuisance Law. The nuisance law doesn't have any specific standards it just says

if there is something that injures a person's right to quiet enjoyment of his or her property that can become a nuisance. It does not set any particular standards or address any particular problem. MEPA serves a very similar function which is, we don't know all of the problems out there, we don't know all of the ways in which the environment can be at risk, MEPA is how we do it.

REP. STORY stated, we have an act which creates a situation where anyone who thinks there is a problem can come forward and make a charge.

REP. MOOD spoke of a Supreme Court Case involving NEPA. The Court held that NEPA is a procedural act.

REP. WANZENRIED stated, this bill asks the legislature to take a leap of faith. It is clear that the sponsor has clear intentions but the policy is going to open up a pandora's box of problems. This is bad policy at the wrong time. He asked the committee to vote against the motion.

REP. BROWN stated, it is the job of the legislature to debate these issues.

Vote: Motion on the bill **carried 12-8 with Cyr, Eggers, Erickson, Gutsche, Harris, Hurdle, Tramelli, and Wanzenried voting no.**

EXECUTIVE ACTION ON HB 513

{Tape : 3; Side : A; Approx. Time Counter : 25.4}

Motion: **REP. DALE** moved that **HB 513 DO PASS.**

Discussion:

REP. BROWN stated, there are some problems in Missoula but we should not blanket the State of Montana with this rule on nitrates because it is not warranted.

REP. STORY stated, Missoula has a different system than the rest of the state. They have a sole source aquifer. They also have a Water Quality District who can create and enforce their own laws. He gave an example of why this bill should pass.

REP. ERICKSON stated, it costs \$12.90 to do this test. There may be something wrong with current law but this process goes overboard to fix a problem and it is too broad. The nitrates in ground water could be a major health problem for infants. There is good reason to be concerned about septic tanks in the same

area where there are wells because nitrate pollution can happen. The whole Clark Fork drainage is affected by nitrates. We have to deal with the health problem out there.

REP. WANZENRIED stated, this is a substantive law, it is on the books. We are going to repeal a law without really understanding the total effects.

REP. HOLDEN asked, when you get a septic tank do you have to get a permit? So there's certain rules to install it. There are some septic tanks that have been put in before these permits. She stated, we should not have to charge everyone and make them wait but we should not gloss over everything also. She suggested waiting until Monday so the committee could research this issue. She stated, this covers one acre lots or larger so in a town this probably wouldn't fit anyway.

REP. STORY stated, page 7 states the part of the law that governs septic tanks right now. Other than your installation permit they look at the water coming out of the system and how it affects the surrounding water. He asked **Mr. Mitchell** to explain how septic tanks and the non-degradation law work together.

Mr. Mitchell stated, the non-degradation policy says that the state may not allow degradation of waters that are already clean. That makes it impossible to put in a septic tank without a non-degradation analysis.

Vote: Motion carried 12-8 with Cyr, Eggers, Erickson, Gutsche, Harris, Hurdle, Tramelli, and Wanzenried voting no.

EXECUTIVE ACTION ON HB 535

{Tape : 3; Side : A; Approx. Time Counter : 39.2}

Motion: **REP. BROWN** moved that **HB 535 DO PASS.**

Motion: **REP. HARRIS** moved that **AMENDMENT FOR HB 535 BE ADOPTED.**

Discussion:

REP. STORY stated, he opposes the amendments. If this is good for one industry it is good for them all.

REP. HARRIS moved to segregate amendments 2, 3, 4, 5 and 6.

Vote: Motion **AMENDMENTS 2, 3, 4, 5 AND 6 BE ADOPTED** carried unanimously.

Motion: REP. HARRIS moved that **AMENDMENTS 1 AND 7 BE ADOPTED.**

Discussion:

REP. HARRIS explained, the bill was originally drafted to include all mining operations. In discussions with DEQ it became clear that the real serious problems were with the metal mining industry. That is the rationale behind the amendment. He stated, across the board a bond is a bond and there should be a certification of its adequacy. He considered it a friendly amendment to not vote for 1 and 7.

REP. WANZENRIED asked, if these amendments are incorporated does that narrow the scope? REP. HARRIS stated yes.

REP. DALE spoke about the situation at Zortman - Landusky. He stated, this law could be used inappropriately and he would oppose the amendment.

Vote: Motion that **AMENDMENTS 1 AND 7 BE ADOPTED** carried 11-9 with Bales, Bitney, Brown, Clancy, Eggers, Hurdle, Laible, Story, and Younkin voting no.

Motion: REP. HARRIS moved that **HB 535 DO PASS AS AMENDED, AMENDED.**

Discussion:

REP. LASZLOFFY stated he is going to vote against the bill. The major problem with the bill is it's a classic case of the fox guarding the hen house. The thought that we would let the mining industry write their own bonding requirements is insane. Also, the fact that this type of statute occurs nowhere else in Montana law bothers him.

REP. HARRIS stated, this is not the fox guarding the hen house. Nothing in this bill will undermine the dialogue that goes on between the mine owner and DEQ as to the adequacy of the bond. The important thing is that the mine owner has to certify that the amount is adequate.

REP. BALES stated that most boards have insurance to protect the directors from liability, etc. He stated he would not sit on the board of a company that had to sign an affidavit that could perjure him. This will be a complete shutdown of all of the metal mining within the state. He is against the bill.

REP. HARRIS stated, he does not believe that these certifications will make all of the mines flee the state.

Vote: Motion failed 7-13 with Eggers, Erickson, Gutsche, Harris, Hurdle, Tramelli, and Wanzenried voting aye.

REP. YOUNKIN reversed the vote to a Table motion.

ADJOURNMENT

Adjournment: 7:45 P.M.

REP. CINDY YOUNKIN, Chairman

HOLLY JORDAN, Secretary

CY/HJ

EXHIBIT (nah39aad)